

BEFORE THE NORTH CAROLINA BOARD OF PHARMACY

In the Matter of:

JoAnn Cain

(License No. 11321)

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CONSENT ORDER

This matter came on for consideration at a prehearing conference (hereinafter "conference") pursuant to 21 N.C.A.C. 46 .2008. This conference was scheduled for November 20, 2006 and was heard on that day at the Board office before Board member Wallace Nelson. Also present at the conference were the following: Jason Smith, Board Investigator; Karen Matthew, Director of Investigations and Inspections; Anna Baird Choi, Counsel for the Board; JoAnn Cain (Respondent Pharmacist); and Steve Shaber, Counsel for Respondent Pharmacist. Based upon the record in this proceeding and the statements and materials presented at the conference, the Board makes the following:

FINDINGS OF FACT

1. Respondent Pharmacist is licensed to practice pharmacy by the Board and is the holder of license number 11321. From August 22, 2005 until approximately October 20, 2005, Respondent Pharmacist was employed as a staff pharmacist at Bi-Lo Pharmacy which was subsequently acquired by Southern Family Market. The pharmacy is located at 3915 Ramsey St., Fayetteville, North Carolina.
2. On November 20, 2005, the Board received a Drug Disaster and Loss Report from RPh. Libby Willis at the Southern Family Market Pharmacy identified above regarding a shortage of 293 units of controlled substances.

3. During an interview with the Board Investigator, RPh. Willis stated that she suspected that Respondent pharmacist was responsible for the loss but had no evidence to confirm her suspicions.
4. During an interview with the Board Investigator on May 11, 2006, Respondent Pharmacist stated that she could not provide an explanation regarding the loss of controlled substances. Respondent Pharmacist provided a urine sample for a drug screen but the test resulted in a lab error.
5. On May 16, 2006, Respondent Pharmacist entered inpatient substance abuse treatment. On or about May 19, 2006, Respondent Pharmacist entered into an NCPRN contract. On June 21, 2006, Respondent Pharmacist was discharged from inpatient treatment.
6. During an interview with the Board Investigator on September 28, 2006, Respondent Pharmacist stated that she became addicted to hydrocodone after the birth of her child in November 2004. She stated that while she never diverted medications from her employer, she had previously purchased hydrocodone without a prescription.
7. At the prehearing conference, Respondent Pharmacist acknowledged her addiction. She also stated that she was not currently employed and was not currently looking for employment.
8. Mr. Shaber stated that there were no criminal charges pending or being investigated against Respondent. Mr. Shaber also stated that Respondent Pharmacist had reported for fourteen drug tests pursuant to daily call-ins, and all results were negative.

Based on the above findings, the Board concludes as a matter of law:

CONCLUSIONS OF LAW

1. Respondent Pharmacist admits that the conduct in this matter constitutes sufficient grounds for disciplinary action on her license under G.S. 90-85.38.
2. Respondent Pharmacist violated the following statutes and rules when she purchased controlled substances without a prescription:
 - a. G.S. 90-85.38(a)(6) and (7);
 - b. G.S. 90-85.40;
 - c. G.S. 90-106;
 - d. G.S. 90-108;
 - e. G.S. 106-134.1;
 - f. 21 U.S.C. 829 and 842;
 - g. 21 C.F.R. 1306.21; and
 - h. 21 N.C.A.C. 46.1805.

Based on the foregoing, and with the consent of the parties, IT IS THEREFORE,
ORDERED, as follows:

1. The license of Respondent Pharmacist, license number 11321, is suspended for the duration of Respondent Pharmacist's NCPRN contract and any subsequent NCPRN contract.
2. The suspension of Respondent Pharmacist's license is hereby stayed upon the following conditions:
 - a. Respondent shall maintain a contract with NCPRN. Respondent must comply with all provisions of her contract. Petitioner shall authorize NCPRN and

any treating physician or other health care provider to release Respondent's medical records to the Board;

b. Respondent must obtain approval of any employment as a pharmacist from the Board's Executive Director prior to beginning such employment;

c. Respondent shall not work as a "floater" or relief pharmacist unless and until such employment is approved by NCPRN and the Board's Executive Director;

d. Respondent shall not work as a pharmacist for more than thirty (30) hours per week. These permitted hours may be increased to forty (40) hours per week if approved in advance by NCPRN;

e. Respondent shall not possess or use any controlled substances, alcohol or any other mood altering substance unless prescribed for her in the usual course of professional treatment and consistent with the terms of Respondent's contract with NCPRN;

f. Respondent shall not serve as pharmacist-manager of any pharmacy;

g. Respondent shall not serve as a preceptor of pharmacy students;

h. Respondent shall be subject to unannounced drug screens to be performed at her expense by the Board or its agents, and shall supply urine, blood, hair, nail, or any other bodily fluid or tissue sample required for the screening. Results of the screening shall not disclose the presence of any controlled substances, prescription drug, or alcohol, which was not previously prescribed for Respondent by a practitioner acting in the normal course of medical treatment of Respondent;

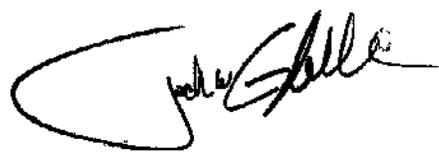
- i. Respondent shall violate no laws governing the practice of pharmacy, the distribution of drugs, or any rules and regulations of the Board;
- j. Respondent shall advise the Board and NCPRN promptly in writing of any change of address, practice status, or compliance with this Consent Order;
- k. Respondent shall cooperate with the Board, its attorneys, investigators and other representatives in any investigation of her practice and/or compliance with the provisions of this Consent Order; and
- l. Respondent Pharmacist shall immediately notify the Board's Executive Director if any criminal charges arise under the facts presented in this investigation.

3. If Respondent Pharmacist fails to comply with any terms or conditions of this Consent Order, Respondent Pharmacist may be subject to additional disciplinary action by the Board.

This the 16th day of January, 2008.

NORTH CAROLINA BOARD OF PHARMACY

By: _____


Jack W. Campbell, IV
Executive Director

JoAnn Cain, the holder of License #11321, has full knowledge that she has the right to a hearing and to be represented by counsel in this matter. She freely, knowingly, and voluntarily waives such right by entering into this Consent Order on behalf of License #11321. The undersigned understands and agrees that by entering into this Consent Order, she certifies that she has read the foregoing Consent Order and that she voluntarily consents to the terms and conditions set out therein and relinquishes any right to judicial review of Board actions which may be taken concerning this matter. The undersigned further understands that should she violate the terms and conditions of this Consent Order, the Board may take additional disciplinary action. The undersigned understands and agrees that this Consent Order will not become effective unless and until approved by the Board.

JoAnn Cain, License #11321, accepts Board member Wallace Nelson's proposal in this matter.

CONSENTED TO BY: JoAnn E. Cain 1-5-07
JoAnn Cain Date
License No. 11321

State of North Carolina Cumberland County

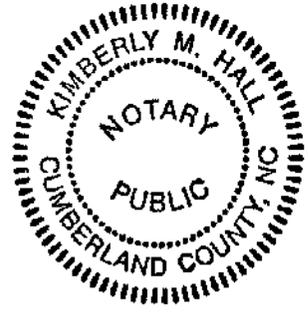
I, Kimberly M. Hall, a Notary Public for the above-named County and State, do hereby certify that JoAnn Cain personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witnessed my hand and official seal

This the 5th day of January, 2007

Kimberly M. Hall
Notary Public

Kimberly M. Hall
Typed or Printed Notary Name



My Commission Expires March 26, 2008

JoAnn Cain, License No. 11321, does not accept the proposed Consent Order in this matter.

By: _____ Date _____
JoAnn Cain
License No. 11321